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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

13 CR 290 (PAC)

5 CHRISTINA CHAI and HI JONG
6 LEE,

7 Defendants.

-----x

9 September 22, 2014
10 9:45 a.m.

11 Before:

12 HON. PAUL A. CROTTY,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

BY: ELISHA KOBRE

18 DANIEL TEHRANI

Assistant United States Attorneys

19 BRAFMAN & ASSOCIATES, P.C.

Attorneys for Defendant Chai

BY: MARC A. AGNIFILO

20 JACOB KAPLAN

21 SERCARZ & RIOPELLE

Attorneys for Defendant Lee

22 BY: ROLAND G. RIOPELLE

23 GIULIANA GRAHAM

24 Also Present: Robert Polimeno, DEA

Nicholas Evert, Paralegal

ARIEN GREENE-PINTO, Korean Interpreter

25 KYCONG SILK SONG, Korean Interpreter

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(In open court; jury not present)

THE DEPUTY CLERK: All rise.

THE COURT: Good morning.

MR. RIOPELLE: Good morning, your Honor.

MR. AGNIFILO: Good morning, your Honor.

THE COURT: When we sent the -- please be seated.

When we sent the exhibits in on Friday afternoon, the jury had already left and we did not place on the record that we were sending the exhibits in. And we did not have, when we talked with the government, I guess neither Mr. Agnifilo nor Mr. Riopelle were here to check on whether or not those were appropriate exhibits to go in.

So before we send them in, I want to make sure that everybody's seeing what's going in and everybody agrees that's what is appropriate sending in

MR. RIOPELLE: Thank you, your Honor.

MR. AGNIFILO: Yeah, we -- I was here and it's fine. The exhibits are fine.

THE COURT: Mr. Riopelle?

MR. RIOPELLE: I'll rely on Mr. Agnifilo, your Honor.

THE COURT: Okay.

MR. AGNIFILO: That's a mistake.

THE COURT: Now, we're not sending in any videotapes or -- just exhibits?

MR. KOBRE: That's correct, your Honor. I believe

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1 there are a number of CDs, and some of them contain videos,
2 others contain actual documentary records. And I suppose if
3 the jury wants to see any of those, we can deal with that at
4 that point.

5 THE COURT: All right. So, Marlon, you're going to
6 give that to the CSO?

7 THE DEPUTY CLERK: Yes, your Honor.

8 THE COURT: After Marlon takes that in, we're going to
9 report as to whether the jury is here. I don't believe they're
10 here yet. They're not all here yet.

11 THE DEPUTY CLERK: Yes, they're all here.

12 THE COURT: Okay. The jury had a few questions about
13 lunches, but they're all here now, so they'll start their
14 deliberation.

15 Do we have your phone numbers where we can reach you?

16 MR. AGNIFILO: Yes.

17 MR. RIOPELLE: I believe so.

18 THE COURT: Thank you very much.

19 MR. RIOPELLE: Your Honor, one thing before you go.

20 THE COURT: Yes, sir.

21 MR. RIOPELLE: I spoke to Mr. Kobre today. In the
22 what I think is the unlikely event that we're continuing to sit
23 through deliberations on Wednesday, Mr. Kobre and I both need
24 to leave a little early because of the Jewish day begins at
25 night and the holiday for Thursday begins on Wednesday evening.

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1 This is something, you know, I learned very late in life.

2 THE COURT: I already -- I appreciate the
3 clarification. I knew you had to leave early.

4 MR. RIOPELLE: Yeah.

5 THE COURT: But I think we told the jury that.

6 MR. RIOPELLE: We did, we did.

7 THE COURT: So we'll certainly do it.

8 MR. RIOPELLE: Okay.

9 THE COURT: Now, what time do you have to leave, 4:00
10 o'clock, 3:00 o'clock?

11 MR. KOBRE: Like 2:00 o'clock, Judge, if that would be
12 all right.

13 THE COURT: 2:00 o'clock?

14 MR. KOBRE: It takes time to get -- you don't want to
15 be late.

16 MR. RIOPELLE: He's got to go home and cook, Judge.
17 All Jewish holidays involve a lot of fat salty foods, so he has
18 to go home and cook.

19 MR. KOBRE: I will not be the one cooking.

20 THE COURT: It's not going to be a problem. We'll
21 cross that bridge if we come to it. We already told the jury
22 they can build in on this. I don't know how many of them are
23 observers, but we told you, Mr. Riopelle, that you would, and
24 Mr. Kobre will, so.

25 MR. RIOPELLE: Yes.

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MR. KOBRE: Thank you, Judge.

THE COURT: It's not going to be a problem.

MR. RIOPELLE: Thank you, Judge.

(Recess pending verdict)

(In open court; jury not present)

11:40 a.m.

THE DEPUTY CLERK: All rise.

(Mr. Kobre not present)

THE COURT: Good morning. Please be seated. Has everybody seen the note?

MR. AGNIFILO: I have.

MR. RIOPELLE: Yes, Judge.

THE COURT: All right. What are your suggestions? Maybe I should read the note into the record first, Bill.

We have a note from the jury received at 11:37 this morning. It's jury note number two.

First question, "Can you give us a more explicit definition of intent?"

Second question, "Agent Polimeno's testimony."

Third question, "What exhibit is the DEA's 6, what is the DEA-6 re Chai's statement, as well as his handwritten notes?"

Let's take them up in order. The first question, what about intent?

MR. TEHRANI: Your Honor, I would propose that they

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1 just be directed to the portion of the instructions that
2 defines intent.

3 THE COURT: Mr. Agnifilo.

4 MR. AGNIFILO: I'm giving -- I obviously just got the
5 note. I'm giving it some thought.

6 I'm just thinking through it. I mean, I think
7 obviously they're asking for something -- and I'm not saying we
8 do it or don't do it, but they seem to be asking for something
9 that they don't already have. Now whether we decide to give it
10 to them or not -- because they're saying they want a more
11 explicit definition. Now they have the jury instructions so
12 they know what the definition is, and obviously they're caught
13 up on something related to intent and seem to want further
14 guidance.

15 I don't know if the Court's had this situation. Some
16 judges have more explicit longer intent charges for occasions
17 like this, and some don't. I don't know if your Honor has a
18 practice or preference.

19 THE COURT: Mr. Riopelle?

20 MR. RIOPELLE: Your Honor, I don't know as I stand
21 here how closely the Court's charge on intent in connection
22 with a conspiracy count mirrors the Sand instruction.

23 Your Court's charge was I thought a good brief direct
24 charge. If the Sand instruction has different language or is a
25 little, a little more fulsome, then I would propose reading the

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1 Sand charge to the jury since we know it's an approved charge
2 in this Circuit, and it may satisfy that question without
3 getting us into any trouble. That's one alternative I can
4 think of quickly,.

5 THE COURT: Well, I don't know whether my charge is or
6 is not based on Sand certainly. I consulted Sand.

7 MR. RIOPELLE: Yeah.

8 THE COURT: And I think it's -- if it's not the Sand
9 charge, it's something very close.

10 MR. RIOPELLE: Yeah. Okay.

11 THE COURT: I'll check.

12 MR. RIOPELLE: I mean that's just a suggestion.

13 THE COURT: I think my reaction is to point the jury
14 to the sections in the jury charge that deal with intent.

15 MR. RIOPELLE: Very well, your Honor.

16 THE COURT: I mean, maybe we can agree on that. We
17 agree on what charge, what portions of the charge deal with
18 intent. I think I charge them knowingly and intentionally with
19 respect to the conspiracy, and --

20 MR. RIOPELLE: Yeah.

21 THE COURT: And the count with respect to the second
22 count I say I've already defined them.

23 MR. RIOPELLE: Yeah and willfully I think --

24 THE COURT: I add willfully.

25 MR. RIOPELLE: Yeah, willfully needs to be described

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1 too because that's part of intent.

2 THE COURT: That's not the question. They asked about
3 intent.

4 Agent Polimeno's testimony.

5 MR. RIOPELLE: I think it should be both direct and
6 the cross examination, your Honor.

7 MR. TEHRANI: We agree on that. I think we can work
8 on pulling it out and making sure we redact any sustained
9 objections, that kind of thing, side bars. I don't think that
10 it's a controversial --

11 THE COURT: The only question I would ask is do you
12 want the entire testimony.

13 How long is the entire testimony?

14 MR. TEHRANI: Well, it was over the course of two
15 days. Cross-examination continued on day two. You know, I
16 think it's fairly lengthy, but they didn't suggest anything in
17 their note that would direct us to --

18 THE COURT: I can ask them.

19 In what exhibit is the DEA-6 re chai statement as well
20 his handwritten notes.

21 MR. TEHRANI: That's not in evidence.

22 THE COURT: It's not in evidence.

23 MR. TEHRANI: That's correct.

24 MR. AGNIFILO: It's not in evidence.

25 THE COURT: Okay.

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1 MR. AGNIFILO: Judge, just on -- it seems pretty clear
2 that I think they want his whole testimony. I mean, they seem
3 to be pretty precise in their notes. And if they wanted
4 something in particular, I think they would have asked, it
5 seems.

6 THE COURT: Okay. If you have your jury charge there,
7 what I would propose to do is point them to page 29 and page
8 35.

9 MR. AGNIFILO: Would your Honor be directing them in
10 regard to the intentionally and knowingly defined from pages 29
11 to 31?

12 THE COURT: Yes.

13 MR. AGNIFILO: Okay.

14 THE COURT: Not 31. 35.

15 MR. AGNIFILO: No, no, but there's two and a half
16 pages. I mean, my only concern with your Honor saying 29 is
17 the charge on this is from 29, 30 and ends on 31. As long as
18 they know that's the whole, that whole charge is in context.
19 And then on page 35 --

20 MR. RIOPELLE: Talking about the top of 35, I assume.

21 THE COURT: Top of 35, correct.

22 MR. TEHRANI: Which portion of 35, what?

23 THE COURT: Second, Mr. Lee knowingly, willfully and
24 intentionally entered into the agreement. I gave you
25 instructions on the elements of the conspiracy earlier in

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1 describing the elements of count one. I have also defined for
2 you knowingly and intentionally. You are to apply those
3 instruction. Then I add what was missing before that's
4 willfully. That's on page 35, Mr. Tehrani.

5 MR. TEHRANI: I don't think they're asking for
6 definition of willfully, your Honor. I mean, they're asking
7 for intent in quotation marks, that define term of intent, not
8 intent more broadly.

9 MR. AGNIFILO: Your Honor, one more question. Is your
10 Honor inclined to give them -- remind them where it is in your
11 charge and then ask them if this satisfies them?

12 THE COURT: No.

13 MR. AGNIFILO: Or just leave it alone? Leave it
14 alone.

15 THE COURT: I'm going to tell them intentionally is
16 defined in my charge at pages 29 and following. That's where
17 you should look.

18 MR. AGNIFILO: Okay.

19 THE COURT: Anybody want to tell me where the Sand
20 description of intent is?

21 MR. RIOPELLE: I don't have the book with me, Judge,
22 but I'm sure it's there in the conspiracy instructions.

23 MR. TEHRANI: Your Honor, I think offhand it's in
24 chapter three, but I'm not 100 percent sure.

25 THE COURT: I'll start there, Mr. Tehrani. Thank you.

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1 Here's what Sand says, 384; government must prove beyond a
2 reasonable doubt that the defendant acted intentionally.
3 Before you could find the defendant acted intentionally, you
4 must be satisfied beyond a reasonable doubt the defendant acted
5 deliberately and purposefully, that is, defendant's act must
6 have been the product of defendant's conscious objective rather
7 than the product of conspiracy, mistake or accident.

8 An act is done knowingly and intentionally if it is
9 done deliberately, purposefully, that is, defendant's actions
10 must have been the product of his or her conscious objective,
11 not the product of a mistake, accident, negligence or some
12 other innocent reason.

13 MR. RIOPELLE: Yeah, there is literally no difference.
14 There.

15 THE COURT: There is no difference.

16 MR. RIOPELLE: Okay. Thank you, Judge.

17 THE COURT: Now, do we have the testimony with respect
18 to Agent Polimeno?

19 MR. TEHRANI: Your Honor, I'm going through it right
20 now striking out the objections, and then I'll share that with
21 defense counsel.

22 (Mr. Kobre present at this point)

23 MR. RIOPELLE: Did your Honor send back a twister game
24 or something in the jury room?

25 THE COURT: No. They haven't had lunch yet. I know

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1 that.

2 MR. RIOPELLE: Please don't serve any wine.

3 MR. AGNIFILO: I wish I was like that before lunch.

4 THE COURT: It's on the 17th.

5 If you go back to your seats and get out the jury
6 charge.

7 With respect to intent, I find the intent is defined
8 or referred to at pages 28, 29, 40, 41 and 44. My intention
9 tension is to refer the jury to those pages in my jury charge.

10 MR. RIOPELLE: That's agreeable to me, your Honor.

11 MR. AGNIFILO: One second, Judge. Can I have these
12 pages numbers one more time?

13 THE COURT: 28, 29, 30, 41, and 44.

14 MR. AGNIFILO: Thank you.

15 THE COURT: They all say pretty much what Sand says.

16 MR. AGNIFILO: Your Honor, my only request is I
17 wouldn't want them to take -- since 29 is contextual, it's in
18 the context of a whole section that your Honor -- I wouldn't
19 want them to think they can't look at 30, 31, just because your
20 Honor said 29.

21 THE COURT: I'm going to respond to the question, Mr.
22 Agnifilo.

23 MR. AGNIFILO: No, no, I know. But I think that since
24 there's one section here where it's intentionally knowingly
25 defined, my proposal is that you just say what you said, page

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1 28, then 29 through 31 because it's all intent, it's all the
2 definition of intent, and then 40, 41, 44.

3 MR. KOBRE: Your Honor, just to briefly respond to Mr.
4 Agnifilo. I think we would agree with your Honor's proposal.
5 I think the other sections just don't relate to intent.

6 THE COURT: Okay. Are we all set to go now?

7 MR. AGNIFILO: Not quite, your Honor. We're still
8 going through the agent's testimony. Maybe three minutes?

9 MR. TEHRANI: Your Honor, just logistically. Once
10 they've had an opportunity to review and w agreed on the
11 redactions, Mr. Evert could run downstairs and make the
12 redactions very quickly.

13 THE COURT: Give them to the Court Reporter. The
14 Court Reporter will read back the testimony.

15 MR. TEHRANI: Okay.

16 THE COURT: What was your intention, Mr. Tehrani?

17 MR. RIOPELLE: Some judges send the physical copy of
18 it in there with the redaction and let the jury read it for
19 themselves.

20 THE COURT: I intend to read it to them. That's what
21 we told them we would do.

22 MR. RIOPELLE: Very good. Okay. We're just marking
23 the places where there's colloquy and remarks and things like
24 that, so that the Court Reporter knows to skip over it.

25 THE COURT: The court reporter's pretty knowledgable

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1 about these things. I think he knows what to skip.

2 Marlon, call the jury in.

3 12:20 p.m.

4 (Jury entering)

5 THE COURT: Good afternoon. Please be seated.

6 We have your note. Can you give us -- question, first
7 question is, "Can you give us a more explicit definition of
8 intent?" And the short answer to that question is I can't go
9 beyond the definitions that I've already given you. The word
10 intent is defined and discussed in my jury charge. You have it
11 before you, pages 28 and 29, pages 40, 41 and 44. That's the
12 definition of intent, and I refer you to those pages.

13 You should look around those pages too because
14 there's -- you can see how intent is defined and how it has to
15 be judged in context.

16 With respect to the third question, what exhibit is
17 the DEA-6 re Chai's statement as well as his handwritten notes.

18 There is no exhibit of Chai's statement, as well as
19 his handwritten notes. And I assume by that you're referring
20 to Agent Polimeno. He made notes as he testified that were not
21 received in evidence.

22 Second question is, Agent Polimeno's testimony, and
23 we're going to be -- he testified on the 16th and the 17th,
24 Wednesday and Thursday -- excuse me -- Tuesday and Wednesday
25 last week.

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1 We'll now have the Court Reporter read back the
2 testimony of Agent Polimeno.

3 Bill.

4 (Record read)

5 THE COURT: Ladies and gentlemen, your lunch has
6 arrived. I think what we're going to do is take our luncheon
7 break and resume when we come back. This will take about
8 another hour.

9 (Jury excused)

10 THE COURT: We'll check back half hour, 45 minutes for
11 lunch, then we'll resume reading.

12 (Luncheon recess)

13 (In open court; defense counsel on the phone)

14 (Jury not present; government counsel present)

15 THE COURT: Mr. Agnifilo?

16 MR. RIOPELLE: No, this is Roland Riopelle.

17 THE COURT: Okay. This is Judge Crotty.

18 MR. RIOPELLE: Hi, Judge, how are you? I have Marc
19 with me right here. Should I put him on speaker phone?

20 THE COURT: Yes, please.

21 MR. RIOPELLE: Okay. Hold on. Okay, Judge we're both
22 here.

23 MR. AGNIFILO: Hi, your Honor.

24 THE COURT: Okay. I'm sorry to interrupt your lunch,
25 but I was looking at the transcripts of the Polimeno testimony.

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1 MR. RIOPELLE: Yes.

2 THE COURT: And I said it would take another hour.

3 I've since talked with Bill Richards, our Court Reporter. It's
4 more like two or three hours, given the pages.

5 MR. RIOPELLE: Okay.

6 THE COURT: So what would you think about just taking
7 the transcript, editing out along lines you've already agreed
8 to, and giving the jury the transcripts with the instructions
9 that they should read the entire thing?

10 MR. AGNIFILO: Your Honor, this is Marc. My concern
11 is that we've now already read most of the Government's direct.
12 I don't know. I would hate to do that, only because we've read
13 the Government's direct and I would hate to do the direct
14 without the cross.

15 MR. RIOPELLE: My sense is that this is not a question
16 that focuses on my client, your Honor, so I would defer to Mr.
17 Agnifilo on this.

18 THE COURT: Does government want to be heard?

19 You know, I really think, Mr. Agnifilo, I was guided
20 by your request that we not -- I think I really should have
21 asked the jury which particular portions, if any, of Agent
22 Polimeno's testimony they wanted. But I'm looking at the
23 testimony of the 16th and the 17th, and it really is -- the
24 16th we have another 40 pages, and the 17th it's almost 80
25 pages. We'll be all day long reading this stuff.

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1 MR. AGNIFILO: Right.

2 I suppose if your Honor wanted to ask -- it's not my
3 first choice, but I understand the time issue. If your Honor
4 wants to ask the jury if there is anything particular they
5 wanted. But my biggest concern is since we've already started
6 the direct, I hate to break it up.

7 Your Honor, I think I have to -- believe me I'm trying
8 to be mindful of the time, but I think my preference is if
9 we're going to start with the direct, we do the whole thing.

10 THE COURT: All right.

11 Mr. Riopelle, you did some examination and Agent
12 Polimeno, I mean when he was recalled was for your benefit. If
13 we send the -- we do the read backs, could we do the read backs
14 of Mr. Agnifilo and send in the balance, we'll send in the
15 transcript that would satisfy your needs and save some time?

16 MR. RIOPELLE: I think that's agreeable to me, your
17 Honor. Under the circumstances, my sense is that these
18 questions refer to Mr. Agnifilo's client. So I'm willing to
19 send back the transcript related to our client.

20 THE COURT: All right. Okay.

21 MR. RIOPELLE: That may save some time.

22 THE COURT: Now, I take it since both of you are out
23 of town -- out of the courthouse in a restaurant, the
24 defendants are -- this is a legal only discussion. Some of the
25 defendants are here, some of them are not here.

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1 MR. RIOPELLE: Right, right.

2 MR. AGNIFILO: Right. We could put it on the record
3 when I get back, your Honor. I'm happy to the waive the
4 appearance. It's really a legal discussion.

5 THE COURT: All right, thank you very much. I'll see
6 you when you get back.

7 MR. AGNIFILO: Thank you, your Honor.

8 MR. RIOPELLE: Thank you, Judge.

9 (Recess)

10 (Resuming in open court; jury not present)

11 2:10 p.m.

12 THE COURT: I thought we agreed we're going to resume
13 at quarter to?

14 MR. AGNIFILO: I'm sorry if your Honor said --

15 THE COURT: It's not certainly not later than 2:00
16 o'clock.

17 MR. AGNIFILO: We meant to be back here at 2:00.
18 There was a little bit of a line downstairs, but Roland is on
19 his way in.

20 THE COURT: From now I to suggest you stay in the
21 building.

22 MR. AGNIFILO: That's fine, Judge.

23 THE COURT: Call the jury.

24 THE DEPUTY CLERK: Yes, sir.

25 (In open court)

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MR. RIOPELLE:

(Jury returning to the courtroom)

2:11 p.m.

THE COURT: Please be seated. We're going to finish the reading of the direct examination of Agent Polimeno by the government. This is cross examination by Mr. Agnifilo, then we're going to send in the transcript so you can read the entire transcript if you wish. Right now we'll resume at page 943, line 21.

(Record read)

(Jury retires to continue deliberations at 4:05 p.m.)

(In open court, jury not present)

THE COURT: Okay. Anything else?

MR. RIOPELLE: No.

MR. AGNIFILO: No, Judge. Thank you.

(Recess pending verdict)

THE COURT: We have the transcripts that have been prepared with the redactions. These consist of Agent Polimeno's testimony. There is six copies, one for every other juror. They'll have to share. You've seen this, haven't you, Mr. Agnifilo?

MR. AGNIFILO: Yes.

MR. RIOPELLE: Yes.

THE COURT: You agree?

MR. RIOPELLE: Yes.

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1 MR. AGNIFILO: Yes.

2 THE COURT: Mr. Riopelle?

3 MR. RIOPELLE: Yes. Thank you.

4 (Recess pending verdict)

5 (In open court, jury not present; government not
6 present)

7 5:30 p.m.

8 THE COURT: We have a note. Do you want to come up
9 and get it?

10 MR. AGNIFILO: Sure.

11 THE COURT: It says they want to go home.

12 MR. RIOPELLE: Okay. Well, are you going to let them
13 go?

14 THE COURT: Yeah, sure. Let my people go.

15 MR. RIOPELLE: Said Moses.

16 THE COURT: Said Moses.

17 I don't think we need the government for this.

18 MR. AGNIFILO: I don't think so.

19 THE COURT: Just wait till the government gets here.

20 THE DEPUTY CLERK: You want the government to come up,
21 Judge?

22 THE COURT: Yeah, I think -- I don't know -- we should
23 call everybody up so they're here.

24 Did you show the note to Mr. Riopelle?

25 MR. RIOPELLE: Yeah, we it.

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1 MR. AGNIFILO: We saw it.

2 THE COURT: Do you want the government up or just tell
3 them --

4 MR. AGNIFILO: I don't feel we need them up. If they
5 just want to go at 5:30, that's okay.

6 THE COURT: Did they leave, Marshal?

7 THE MARSHAL: They left, yes, sir.

8 THE COURT: Okay. They're gone.

9 MR. RIOPELLE: They're gone anyway. Okay.

10 THE COURT: Tell them we're adjourning for the day.
11 Okay, see you tomorrow morning at 9:30.

12 MR. AGNIFILO: Thank you, your Honor.

13 MR. RIOPELLE: Thank you, Judge.

14 THE COURT: Wait a few minutes to let the jury clear
15 out.

16 MR. RIOPELLE: Yes, we will.

17 MR. AGNIFILO: Yes, sure.

18 (Adjourned to September 23, 2014 at 9:30 a.m.)
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